

## HOW TO APPEAL A COMMISSION DECISION

When a local historic district commission denies an application for a permit, the applicant may not legally proceed with any exterior work, including demolishing or moving a structure, unless the commission's decision is appealed and is set aside or modified by higher authority.

Michigan's Local Historic Districts Act (1970 PA 169, § 5; MCL 399.205) provides that a person aggrieved by a commission's decision may appeal to the State Historic Preservation Review Board. The Review Board is an agency of the Michigan Department of History, Arts and Libraries. The Board's members have expertise in history-related disciplines, and the Board has authority to affirm, modify or set aside a commission decision. However, before anyone petitions the Board for relief, **every effort should be made to resolve historic preservation issues at the local level**.

### INSTRUCTIONS FOR FILING:

To appeal a commission's decision, an aggrieved party should mail a written claim of appeal, in any form or format, to the State Historic Preservation Review Board, Michigan Library and Historical Center, 702 West Kalamazoo Street, P.O. Box 30740, Lansing, Michigan 48909-0348. The appeal may be faxed to 517-335-0348. By law, appeals must be filed **within 60 calendar days** after the applicant has received a written notice of denial or other action of the commission. **A copy of the notice must always accompany the appeal.** In addition, the appeal must clearly state that it is an "appeal" and must also indicate the reason or reasons for reversing the denial. Inquiries may be directed to the Review Board's Executive Secretary, Brian D. Conway, at 517-373-1630.

### THE ADMINISTRATIVE HEARING

After a claim of appeal is filed, the Review Board will refer the matter to the State Office of Administrative Hearings and Rules (SOAHR). SOAHR will schedule an administrative hearing and assign an Administrative Law Judge to preside over that proceeding. The hearing represents an opportunity for the petitioner and the commission to present evidence and legal arguments. All parties will be informed of the place, date and time for the hearing by SOAHR. In lieu of a hearing, a petitioner may choose instead to submit his or her evidence and arguments in documentary form. If a hearing has been scheduled and the petitioner subsequently decides not to attend, the petitioner should so inform the Administrative Law Judge prior to the hearing.

Petitioners have the burden of proof at administrative hearings. Thus, petitioners must be prepared to show how the commission has erred and explain why the commission's decision should be modified or set aside.

### POSSIBLE ISSUES

Every administrative appeal is unique, and claims of commission error will differ. However, the following are examples of claims of error that have previously been alleged:

1. The historic district commission was arbitrary and capricious.
2. The commission should have determined that the resource was a hazard to public safety.
3. Continuation of the historic resource will deter a major community improvement program.
4. The commission improperly applied the U.S. Secretary of the Interior's Standards for Rehabilitation and the federal Guidelines for Rehabilitating Historic Buildings.
5. Historic resource retention will cause undue financial hardship for the property owner.

Again, appeals should always specify the reasons why the commission's decision is believed to be erroneous.

## **EVIDENCE**

As noted above, appellants have the burden of proof and must prove that alleged error actually occurred. To do this, petitioners typically present evidence at the administrative hearing. Evidence may consist of documentary materials, such as labor estimates and materials price quotes. Appellants may also present sworn testimony from themselves, and from witnesses like licensed contractors who have inspected the historic building and possess knowledge of its condition. Photographs, designs, and drawings, etc., may also be submitted.

Petitioners should begin preparing for their hearings well in advance. In other words, a petitioner should not wait until shortly before the day of hearing to begin collecting evidence. Orderly presentations are helpful to everyone. A party should **bring at least three (3) copies** of each exhibit that he/she intends to offer.

Petitioners **must** present certain evidence in every case. The required evidence consists of:

1. The original (or a copy) of the written notice from the commission denying the petitioner's application to perform work in the historic district.
2. The original (or a copy) of any document verifying the petitioner has a legal interest in the property. This could be a deed, purchase agreement, land contract, or a lease.

## **LEGAL REPRESENTATION**

Petitioners may represent themselves or engage a legal representative during the appeal. An attorney employed by a petitioner should file an appearance with SOAHR. The appearance may be faxed to 517-335-6696.

## **COMMISSION REPRESENTATIVE**

Most commissions send at least one representative to the administrative hearing. Sometimes this representative testifies at the hearing. Also, commissions generally submit relevant documents maintained in their files. Such documents are usually admitted into the official hearing record. The commission's representative, who may be a municipal attorney, will also be expected to submit copies of local historic district ordinances, as well as other pertinent materials such as meeting minutes and local restoration standards and guidelines.

## **THE DECISION PROCESS**

After the hearing, the Administrative Law Judge will prepare a Proposal for Decision for the Review Board's consideration. SOAHR will send a copy of the proposed decision to the petitioner or the petitioner's attorney and to the commission's legal representative. If either party is dissatisfied with any aspect of the proposal, the party may file written exceptions. The Review Board will then consider the proposal, along with any exceptions, at its next regularly scheduled meeting. After reviewing all materials, the Board will issue the Final Decision and Order in the case. Copies will be furnished to the parties and their attorneys. Typically, a Final Decision and Order will be issued within three to four months of the date an appeal is received.

## **APPEALS OF REVIEW BOARD DECISIONS**

A petitioner who is dissatisfied with the Review Board's Final Decision and Order may appeal to circuit court. Appeals must be filed with the court that has jurisdiction over the commission whose decision was appealed to the Board. Court appeals must be filed within 60 days of issuance of the Final Decision and Order.